

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE - 560 033.

Dated: 28 MAR 1995

APPLICATION NO. 544 of 1994.

APPLICANTS: Sri.M.Sampath Kumar,Bangalore.

V/S.

RESPONDENTS: The Central Provident Fund Commissioner,
New Delhi&another.

To

1. Sri.Ravivarma Mumar,Advocate,
No.11,Jeevan Buildings ,
Kumara Park East,Bangalore-1.
2. Sri.M.Vasudeva Rao,
Addl.Central Govt.Stng.Counsel,
High Court Bldg,Bangalore-1.

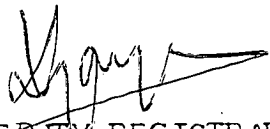
Subject:- Forwarding copies of the Orders passed by the
Central Administrative Tribunal,Bangalore-38.

-----xxx-----

Please find enclosed herewith a copy of the Order/
Stay Order/Interim Order, passed by this Tribunal in the above
mentioned application(s) on 16-03-1995.

Issued on
28/3/95
R

9c

for 
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore - 560038.

Dated: 28 MAR 1995

To

1. Sri.Sanjeev Malhotra,
All India Services Law
Journal, No.22, Tagore
Park, Near Model Town,
D E L H I - 110 009.
2. M/s.Administrative Tribunal
Reporter, No.90, Bhagar Singh
Market, NEW DELHI - 110 001.
3. The Administrative Tribunals
Judgements, No.3857, Sector-32D,
C H A N D I G A R H -160047.
4. The Editor, Administrative
Tribunal Cases, C/o. Eastern
Book Company, No.34, Lalgah,
L U C K N O W -226 001.
9. The Secretary, Karnataka Law
Reporting Council,
Old K.G.I.D. Building,
Bangalore-560 001.
5. M/s.Services Law
Reporter, No.108,
Sector-27-A,
C H A N D I G A R H.
6. The Chief Editor,
Weekly Law Notes,
Khanda Falsa,
J O D H P U R
7. The Dy.Secretary,
Indian Law Academy,
Rajajipuram,
L U C K N O W -226017.
8. The Manager,
Swamys Publishers(P)
Ltd., PB.No.2468,
No.164, R.K.Mutt Road,
Sandhya Mansions,
Raja Annamalaipuram,
M A D R A S -600 028.

Sir,

I am directed to forward herewith a copy each of
the undermentioned Orders passed by a Bench of this Tribunal
with a request for publication in the journals.

APPLICATION NUMBER.

DATE OF THE ORDER.

1. O.A.No.544 of 1994. Dated.16-03-1995.

-x-x-x-x-x-x-x-

7/c

Yours faithfully,

Copy, for information is forwarded to the following Benches:

1. The Registrar, Central Administrative Tribunal,
Principal Bench, Faridkot House, Copernicus Marg,
NEW DELHI - 110 001.
2. The Registrar, Central Administrative Tribunal,
Fifth Floor, B.D. Patel House, Near Sardar Patel
Colony, Navjivan Post, Naranpura, Ahmedabad-380014.
3. The Registrar, Central Administrative Tribunal,
No.23-A, P.B.No.13, Thorn Hill Road, Allahabad-211001.
4. The Registrar, Central Administrative Tribunal,
Gulistan Bldg, 4th Floor, Near Bombay Gymkhana,
Opp. B.M.C. ENT Hospital, Prescott Road, Bombay-400001
5. The Registrar, Central Administrative Tribunal,
C.G.O. Complex, 234/4, A.J.C. Bose Road,
Nizam Palace, Calcutta-700 020.
6. The Registrar, Central Administrative Tribunal,
S.C.O., No.102/103, Sector-34-A, Chandigarh-22.
7. The Registrar, Central Administrative Tribunal,
Kandamkulathil Towers, 5th & 6th Floor, M.G. Road,
Opp: Maharaja College, Ernakulam, Cochin-682 001.
8. The Registrar, Central Administrative Tribunal,
4th Floor, Rajaswa Bhavan, Cuttack-753 002.
9. The Registrar, Central Administrative Tribunal,
Rajgarh Road, Bhangagarh, PB No.58, GPO, Guwahati-781005.
10. The Registrar, Central Administrative Tribunal,
No.5-10-193, Ist Floor, H.A.C.A. Bhavan, Opp: Public
Gardens, Hyderabad-500 004.
11. The Registrar, Central Administrative Tribunal,
No.C-12, Civil Lines, Bhat Vatika, Jaipur.
12. The Registrar, Central Administrative Tribunal,
No.69, Pata, PB.No.619, Jodhpur-342 006 (Rajasthan).
13. The Registrar, Central Administrative Tribunal,
Caravas Complex, No.15, Civil Lines, Jabalpur-482001.
14. The Registrar, Central Administrative Tribunal,
No.2, Moti Mahal, Rana Pratap Marg, Lucknow.
15. The Registrar, Central Administrative Tribunal,
First Floor, Additional City Civil Court Building,
High Court Campus, Madras-600 104.
16. The Registrar, Central Administrative Tribunal,
No.B-8-A, Sri Krishna Nagar, Patna-800 001 (Bihar).


DEPUTY REGISTRAR
JUDICIAL BRANCH.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

O.A. No.544/94

THURSDAY THIS THE SIXTEENTH DAY OF MARCH 1995

Shri V. Ramakrishnan ... Member [A]

Shri A.N. Vujjanaradhya ... Member [J]

M. Sampath Kumar,
S/o late Munirajappa,
Aged 48 years,
Working as Enforcement Officer,
at Regional Provident Fund
Commissioner's Office, and
now retired, residing at
No.1, 'G' 15th Street,
Ulsoor, Bangalore-8.

... Applicant

[By Advocate Shri Ravivarma Kumar]

v.

1. Central Provident Fund
Commissioner,
Mayur Bhavan,
Connaught Circus,
New Delhi - 110 001.
2. Regional Provident Fund
Commissioner,
No.13, Rajaram Mohan Roy
Road, Bangalore-560 025.

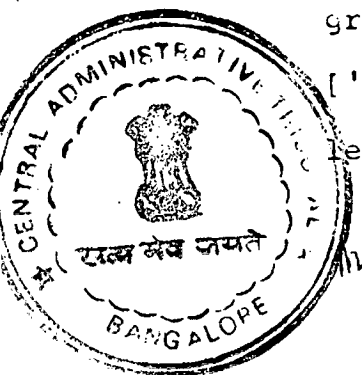
... Respondents

[By Advocate Shri M.Vasudeva Rao ...
Addl. Standing Counsel for Central Govt.]

O R D E R

Shri A.N. Vujjanaradhya, Member [J]:

1. The applicant is aggrieved by the denial of benefit claimed by him with effect from 27.7.1977 on the ground that he belongs to Schedule Tribe Community ['STC' for short] and intimating that he was not entitled to the benefit prior to 19.4.1991 as in OM dated



26.9.1993 [Annexure A-4] issued by Respondent ['R' for short] No.2.

2. The facts are as below:

The applicant has retired on superannuation with effect from 31.1.1994 as an Enforcement Officer. He was appointed in the office of R-2, Regional Provident Fund Commissioner, as Lower Division Clerk against general category on 9.12.1957. He was promoted to the cadre of UDC, Section Supervisor and Enforcement Officer as a general candidate. Later on Government of Karnataka classified the communities viz., Naika, Nayaka, Challava Nayaka, Kapadia Nayaka, Mota Nayaka and Nana Nayaka as belonging to STC with effect from 1.5.1976 and the Government of India by notification dated 27.7.1977 has also included the above categories under ST. Pursuant to the above notification the applicant filed a representation to treat him as ST with effect from 10.1.1977 claiming that he belonged to Beda community which according to him is a synonym of Nayaka which is classified as ST on the basis of caste certificate obtained from the Tahsildar, Bangalore North Taluk, dated 10.1.1977. The request of the applicant was not considered since he belonged to Beda Community which has not been classified as ST. Therefore, he filed W.P. before High Court of Karnataka which came to be transferred to this Tribunal and disposed of in O. A. No. 164/86 to 166/86 on the file of this Tribunal which was disposed of on 12.11.1986 with a direction to enquire into the matter afresh after giving an opportunity to the

h

applicant to present his case. The applicant who had taken back the certificate was required to produce the same but instead of producing the original caste certificate the applicant produced a fresh certificate dated 9.10.1991 obtained from the Tahsildar, Bangalore. Consequent on the notification dated 19.4.1991 notifying Naik, Nayaka, Beda, Bedar and Valmiki communities under ST category by Government of India circulated by Central Provident Commissioner dated 6.2.1992 the representation of the applicant was considered from that date and he was to be treated as ST from 19.4.1991 and not from 10.1.1977. In the meanwhile the applicant filed OA No.473/92 before this Tribunal which was disposed of directing the respondents to decide the status of the applicant with regard to his claim as ST. The Deputy Commissioner after enquiry confirmed the caste certificate produced by the applicant without comments. Accordingly the applicant was replied to stating that he is entitled to consequential benefits provided for ST only with effect from 19.4.1991.

3. Being aggrieved by the action of the respondents, the applicant has made this application seeking to quash Memo dated 26.8.1993 as in annexure A-4 and treat him as ST with effect from 27.7.1977 and to grant him all consequential benefits retrospectively including promotion and refixation.

The respondents contend that in view of Constitution [Scheduled Tribe] Orders [Amendment] Ordinance,



1991 [referred to as 'Ordinance 3 of 1991' for short] which was issued with immediate effect on 19.4.1991, the applicant is entitled to the benefits only prospectively and not from any date prior thereto.

5. We have heard Shri Ravivarma Kumar, learned counsel for the applicant and Shri M. Vasudeva Rao, learned Standing Counsel for the respondents.

6. It is now not in dispute that Beda community to which the applicant belongs to is synonym with Nayaka community and the said community was known by different names in different regions of Karnataka state and further that the said community is declared as ST. The question for our consideration, therefore, is from what date the applicant is entitled to the benefit flowing from the said position. Naika, Nayaka, Cheluva Nayaka, Kapadia Nayaka, Mota Nayaka and Nana Nayaka were classified as belonging to ST by notification dated 27.7.1977 by the Govt. of India. Subsequently in pursuance of the Ordinance 3 of 91 dated 19.4.1991 which came into force with immediate effect Government of Karnataka issued GO dated 17.9.1992 as in Annexure A-5 treating the communities viz., Naika, Nayaka, Beda, Bedar and Valmiki as ST and are entitled to the benefits as such only from 19.4.1991. Referring to the same the request of the applicant was turned down by R-2 as can be seen from office memo dated 26.8.1993 [Annexure A-4]. Relying on the

M

decision in INCOME TAX OFFICER, TUTICORIN V. T.S.D. NADAR reported in AIR 1968 SC 623 Shri Rao contended that the general rule of interpretation is that statute is only prospective and as the Ordinance came into force on 19.4.1991, the applicant cannot seek any benefit on the ground that he belongs to ST community prior thereto. Snri Ravivarma Kumar controverted the above contention and referred us to the decision of High Court of Karnataka in Writ Petition No.22662/91 filed by one E.M. Munivenkatappa against the KSRTC and another which has become final as the Writ Appeal filed by the KSRTC was dismissed on 21.3.1991 as can be seen from the order in Writ Appeal No.470/91 [copies produced by the applicant]. The order passed in W.P.-No.22662/91 dated 18.11.1991 which is brief may be quoted with advantage:

"The petitioner is employed by the 1st respondent Corporation. He claims to have belonged to Scheduled Tribes inasmuch as he belongs to 'Beda' caste. The respondents held an enquiry and came to the conclusion that the petitioner belongs to 'Beda' caste and not 'Nayaka' caste which is not scheduled Tribes and accordingly held as per Annexure-H. Now an Ordinance has been issued amending the Constitution [Scheduled Tribes Orders [Amendment] Ordinance, 1991], by which it is declared that Nayaka, Naik, Beda, Bedar and Valmiki, are all scheduled tribes. In the matters of this nature the effect of such Ordinance have been considered by several decisions both by Supreme Court and this Court holding that it amounts to declaration of law by the Ordinance and therefore, it should have retrospective effect."



He has also sought support for his contention from the decision in SHANTHI V. STATE OF KARNATAKA AND ANOTHER reported in 1994[3] KIJ 128 decided by the

High Court of Karnataka on 8.7.1994 in which the question was considered in detail and was held that the Ordinance 3 of 91 which was subsequently enacted was only in the nature of declaration and not merely procedural and, therefore, it has come into operation retrospectively. On the basis of these decisions Shri Ravivarma Kumar contended for the applicant that he is entitled to all the benefits treating him as belonging to STC and a review of his promotions as well as fixation of pay. Shri Rao sought to make a distinction contending that the decision of High Court of Karnataka in the case of Shantha, the question was considered only incidentally and as the review petitioners therein was sought to be proceeded against conceding that Beda and Nayaka were two different communities and those were not synonyms. Whatever it may be the reasoning therein indicates that the amendment brought about by Ordinance 3 of 91 including Beda community as STC to which the applicant belongs is only declaratory and therefore it comes into effect retrospectively from 27.7.1977 and not necessarily from the date of the Ordinance viz., 19.4.1991. Learned Counsel for the applicant has also brought to our notice the decision of the Supreme Court in Civil Appeal No.481/89 rendered in CHANDRA KUMAR VS. UNION OF INDIA AND OTHERS decided on 2.12.1994 [copy produced] wherein it was observed that the decision of High Court will have persuasive value and the Tribunal cannot sidetrack the decision of the concerned High

h

Court. In E.A. MUNIVENKATAPPA V. KSRTC it has been specifically held though the order is not well reasoned that amendment brought about by Ordinance 3 of 1991 amounts to declaration of law by the President and, therefore, it should have retrospective effect. Even in the decision referred to by the learned Standing Counsel rendered in INCOME TAX OFFICER, TUTICORIN V. T.S.D. NADAR what is stated by the Supreme Court as summarised in the Head Note C is--

"The general rule is that all statutes other than those which are merely declaratory, or which relate only to matters of procedure or of evidence, are prima facie prospective; and retrospective effect is not to be given to them unless by express words or necessary implication, it appears that this was the intention of the legislature. In fact, the Court must look to the general scope and purview of the statute, and at the remedy sought to be applied and consider what was the former state of the law, and what it was that the Legislature contemplated."

Even in this decision it is clearly stated that all statutes other than those which are merely declaratory are prima facie prospective which would naturally mean that statutes which are declaratory in nature will have retrospective operation. In view of this clear position of law, we are inclined to accept the contention of the learned counsel for the applicant and conclude that the applicant who belongs to Beda community and which was declared as synonym of Nayaka came to be declared as ST not from the date of Ordinance 3 of 91 but on the date when the several other communities were treated as ST with effect from 27.7.1977.



7. In view of our conclusion, the Office memo dated 25.8.1993 as in Annexure A-4 denying the benefits flowing from treating the applicant as ST with effect from 27.7.1977 cannot be sustained and it will have to be quashed. The department should treat him as a member of ST with effect from 27.7.1977 and consider him for promotion to the next higher level of Enforcement Officer under the quota reserved for ST from such date as it falls due. Shri Ravivarma Kumar tells us that such a vacancy under ST quota had fallen due in 1979. If on such consideration he is found fit for promotion, he should be promoted as Enforcement Officer notionally with effect from the date when the vacancy had arisen under the reserved quota and his seniority as Enforcement Officer would be refixed on the basis of such notional promotion. He will also be entitled to be considered for further promotion as Assistant Commissioner if the same falls due under the quota reserved for ST subject to his eligibility and if found fit given such promotion. The actual financial benefits will be restricted to one year prior to the date of filing of the application. In other words, such financial benefits will be from 11.3.1993. As the applicant has since retired, his pension and other retiral benefits will be refixed taking into account any higher pay to which he becomes entitled.

8. In the result we allow this application and quash office memo dated 25.8.1993 as in Annexure A-4. We

- 9 -

direct the respondents to review the promotion and pay of the applicant from 27.7.1977 treating him as belonging to STC and fix his pay notionally and give the actual benefit from 11.3.1993 besides refixing his pension and other retirement benefits as stated above. No costs.

Sd-

16/12/95

MEMBER [J]

Sd-

16/12/95

MEMBER [A]

bsv



TRUE COPY

[Signature]
28/3/95
Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE - 560 038.

Contempt Petition No.103 of 1996 in

Dated: 4 NOV 1996

APPLICATION NO. 544 of 1994.

APPLICANT(S) : M.Sampath Kumar,

V/s.,

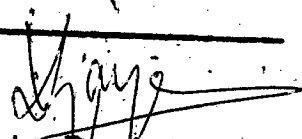
RESPONDENTS : P.S.Kaushik, Central Provident Fund Commissioner,
New Delhi and another.,

To:

1. Sri.C.Jagadish, Advocate, No.11,
Jeevan Bldgs, Kumarapark East,
Bangalore-560 001.
2. Sri.M.Vasudeva Rao, Addl.CGSC,
High Court Bldg, Bangalore-1.

Subject:- Forwarding of copies of the Orders passed by
Central Administrative Tribunal, Bangalore-38.
-x-x-x-

A copy of the Order/Stay Order/Interim Order,
passed by this Tribunal in the above stated applicatio(s)
is enclosed for information and further necessary action.
The Order was pronounced on 28-10-1996.


For Deputy Registrar
Judicial Branches.

In the Central Administrative Tribunal
Bangalore Bench
Bangalore

C.P[er]v[er] Application No. 103 of 1996
NOT NO. 544/94
ORDER SHEET (Contd.)

Date	Office Notes	Orders of Tribunal
		<p>DPH(VC)/VR(MA) 28.10.96</p> <p>Both the respondents personally present. As directed, First respondent has filed his affidavit stating that the compliance of the directions made by this Tribunal in the order in question has been met and undertakes to be more cautious and prompt whenever the question of implementing the orders of the Tribunal is concerned. He also regrets for the lapse on the part of the office in implementing the orders of this Tribunal. In view of the compliance reported and regrets expressed, we drop these proceedings.</p>



sd-

MEMBER (A)

sd/-

VICE CHAIRMAN

TRUE COPY

[Signature]
04/11/96

Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE - 560 033.

Dated: **17 OCT 1995**

MA 412/95 in

0 APPLICATION NO. *544/95*

APPLICANTS: *Central Provident Fund Commissioner,*
N. Delhi Cantt.
V/S.

RESPONDENTS: *Sri. M. Sampath Kumar.*

To

1. *Sri. M. V. Rao*
Addl. C.G. Secy
High Court Bldg,
B'lore - 1
2. *Prof. Ravivarma Kumar,*
Activate,
No. 11, Tervan Bldg,
Kumara Park East,
Bangalore - 11.

Copy Received
Q-11-21-95
(SINO. 2) Advocate

Subject:- Forwarding copies of the Orders passed by the
Central Administrative Tribunal, Bangalore-38.

---xxx---

Please find enclosed herewith a copy of the Order/
~~Stay Order/Interim Order~~, passed by this Tribunal in the above
mentioned application(s) on *5-10-95*

Issued on

17/10/95

Kmib

fu
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

gm*

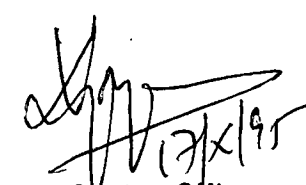

9/c

In the Central Administrative Tribunal
Bangalore Bench
Bangalore

MA 412/95 for Extn of Time.

Application No. 5246 of 1994

ORDER SHEET (Contd.)

Date	Office Notes	Orders of Tribunal
		<p>PKS(VC)/VR(MA)</p> <p>5.10.1995</p> <p>Heard. Time for compliance extended by another six months.</p> <p>Sd- Sd-</p> <p>MEMBER (A) VICE CHAIRMAN</p> <p>TRUE COPY</p> <p> Section Officer Central Administrative Tribunal Bangalore Bench Bangalore</p> <p></p>